

m1039/0013
cc: Lynn

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FILED

OCT 14 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH**

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IN THE MATTER OF THE PETITION	:	NOTICE OF AGENCY ACTION
BY THE DIVISION OF OIL, GAS, AND	:	
MINING FOR AN ORDER:	:	
(1) TO WITHDRAW NOI M/039/013 FOR	:	
B&C LIMESTONE QUARRY;	:	DOCKET NO. 2010-028
(2) TO FORFEIT LETTER OF CREDIT	:	CASE NO. M/039/013
NO. 015413040 FROM FAR WEST BANK,;	:	
TO DIRECT THE DIVISION TO	:	
COMPLETE RECLAMATION, AND	:	
TO AUTHORIZE A CIVIL	:	
SUIT TO RECOVER COSTS	:	
FROM BRYCE HAAS; and	:	
(3) TO TAKE ALL OTHER ACTIONS	:	
NECESSARY TO RECLAIM THE	:	
LANDS AT S½ SW ¼, S32, T18S, R1E	:	
SLB&M AND LOTS 3 & 4 N1/4, S5, T19S,;	:	
R1E SLB&M	:	
SAN PETE COUNTY, UTAH.	:	

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RELIEF SOUGHT

The Division of Oil, Gas, and Mining ("Division"), through its attorneys, hereby petitions the Utah Board of Oil, Gas, and Mining ("Board") for an Order as follows: (1) withdrawing Notice of Intention No. M/039/013 for the B&C Limestone Quarry

("Quarry") due to the failure of Bryce Haas ("Respondent") to substantially reclaim the land; (2) declaring Letter of Credit No. 015413040 ("LOC") from Far West Bank forfeited, directing the Division to complete reclamation of the Quarry, and authorizing the Division to file such further civil actions against Bryce Haas to recover reclamation costs together with all other costs and attorney fees associated therewith; and (3) to take such other actions as may be appropriate or necessary to reclaim the Quarry and recover costs. The quarry is located in S½ SW ¼, S32, T18S, R1E SLB&M and lots 3 & 4 N1/4, S5, T19S, R1E SLB&M San Pete County, Utah.

JURISDICTION

1. This action is brought by the Division pursuant to its authority to enforce the provisions of the Utah Mined Land Reclamation Act ("Act"), Utah Code Annotated §§ 40-8-1 et seq. (2010).
2. Utah Code Annotated § 40-8-6(2) (2010) confers jurisdiction over this matter to the Board and empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.
3. Utah Code Annotated § 40-8-16(3) (2010) provides that a Notice of Intention ("NOI") may not be withdrawn until the operator is provided an opportunity to participate in a hearing on the matter before the Board.
4. Utah Code Annotated § 40-8-16(2)(a) (2010) provides that the Board may withdraw an NOI and order the Division complete reclamation in the event the operator substantially fails to perform reclamation or take responsibility for reclamation costs.
5. Utah Code Annotated § 40-8-14(6)(1) (2010) provides that "if the operator of a

mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.”

6. Utah Administrative Code R647-3-112 (2010) empowers the Board to authorize the Division to complete reclamation and recover of all costs and expenses incurred, including all costs and attorney fees incurred in a civil action to recover the same.

NOTICE REQUIREMENTS

7. Pursuant to Utah Code Annotated § § 63G-4-204 -209 (2010), the Board hearing will be conducted formally.
8. The hearing will be held on December 8, 2010, at 9:00 am. The Respondent may file a written response with the Board within 20 days of mailing of this Notice of Agency Action. Any party who fails to respond or to appear at said hearing may be held in default.
9. The name and addresses of all persons to whom Notice of Agency Action shall be given are attached as the CERTIFICATE OF SERVICE and by this reference incorporated herein.

STATEMENT OF THE FACTS

1. In 1999 the Respondent, Bryce Haas, opened two limestone quarries on state owned lands. The School and Institutional Trust Lands Administration (“SITLA”) issued three separate mineral leases to remove the building stone: ML 48313-MP, ML 47244A-BSLS, and ML 47272A-BSLS. The Division permitted this mining

under Notice of Intention M/039/013. All of these documents were personally executed under the name of the Respondent, Bryce Haas.

2. On August 6, 2001 the Respondent, obtained in the name of Bryce Haas, Letter of Credit No. 015413040 from Far West Bank in favor of the Division for \$36,000.
3. On November 5, 2001, the Division and Respondent entered "Transitional Reclamation Contract." This contract named Bryce Haas as Operator and Registered Agent and held the Respondent personally liable for reclamation until the Division either certified reclamation complete or a large mining operation Reclamation Contract and Surety were put into place.
4. On June 30, 2002 SITLA extinguished the Respondent's three original mineral leases executed under the name of Bryce Haas, and issued ML 48949-OBA to B&H Stone Supply, LLC ("B&H"), the Respondent's business entity. ML 48949-OBA encompassed the same lands as the original leases and placed all "liabilities, obligations, and responsibilities . . . with respect to any mining reclamation requirements or obligations, and any outstanding payments" with B&H. The lease also directed the Respondent to transfer all mining permits executed under the name of Bryce Haas to B&H. This last action was never completed.
5. On June 3, 2005 the Respondent's business entity B&H filed for Chapter 11 bankruptcy. B&H was discharged from a converted Chapter 7 bankruptcy on July 12, 2007. During the bankruptcy proceedings the Respondent moved to personally assume Mineral Lease 48949-OBO. Though an official order on the matter was never entered, SITLA records, below, indicate the Respondent did place all mineral leases under the name of Bryce Haas.

6. On May 18, 2006 Far West Bank informed the Division it intended to decline to renew the LOC. Consequently, on August 31, 2006 the Division issued Cessation Order MC-06-01-09 to Bryce Haas dba B&H Stone Supply for failure to maintain an adequate surety.
7. On December 6, 2006 negotiations between Far West Bank, the Respondent, and the Division, produced a Division letter detailing the remaining reclamation duties and acknowledged the Respondent, as Bryce Haas, personally liable for reclamation of the Quarry. The LOC was reinstated and CO MC-06-01-09 abated.
8. On December 15, 2006, reflecting the liquidation of B&H, SITLA canceled ML 48949-OBA. SITLA then issued ML 50575, a temporary one-year lease granting the Respondent access to the Quarry for reclamation. The lease states "Lessee (Bryce Haas) . . . shall make proper rehabilitation as required by the Utah Mined Land Reclamation Act and as required by all lawful rules and regulations adopted thereunder."
9. Throughout 2007 the Division inspected the quarry and found declining reclamation activity. February 15 and April 25 inspections found reclamation on track with the December 6, 2006 agreement. However, a September 5 inspection showed no new reclamation activity had occurred since May of 2007.
10. On December 31, 2007 reclamation lease ML 50575 expired and SITLA terminated the Respondent's rights to access or operate on the land. The Respondent had not yet completed the required reclamation.
11. On May 1, 2008 SITLA executed ML 51303, a second special one-year reclamation lease. The lease states "permittee (Bryce Haas) agrees to perform,

following the completion of excavations, such reclamation measures as may be required by Permittee and by the [Division]. . . .” The lease includes a special stipulation that the “primary purpose of [the lease] is to enable Bryce Haas to complete mined land reclamation work on the permitted lands for which he is responsible and liable under expired . . . ML 48313 and ML 50575.”

12. On May 9, 2008 and March 11, 2009 Division inspections found some reclamation of the buildings on site but concluded little reclamation of the Quarry had occurred.
13. On April 30, 2009 ML 51303 expired without the Respondent satisfactorily completing reclamation.
14. On May 4, 2009 SITLA granted a 30-day extension of ML 51303 providing the Respondent access to the quarry. The Respondent did not complete the necessary reclamation within the approved 30 day time period.
15. On June 1, 2009 the Division, SITLA, and the Respondent conducted a joint inspection of the Quarry to determine what actions were needed to satisfactorily complete reclamation.
16. On June 8, 2009 SITLA extended ML 51303 for 45 days to provide the Respondent access to the quarry.
17. On August 24, 2009 SITLA concluded the Respondent had failed to conduct adequate reclamation and recommended the matter be referred to the Division for enforcement and reclamation of the land.
18. On August 26, 2009 the Division inspected the Quarry and found little reclamation had occurred since the joint inspection in June. The report states

“[O]perator needs to step up efforts to meet the October 31, 2009 date to have work completed as verbally agreed to.”

19. On January 6, 2010 a Division inspection report found there had been no apparent reclamation work conducted since the Division's August visit. The report recommends the Division consider proceedings to forfeit the surety and complete the rest of reclamation.
20. On March 17, 2010 a Division inspection report confirmed that the Respondent had not substantially conducted reclamation of the Quarry.
21. On October 14, 2010 the Division sent the Respondent notice it intended to withdraw NOI M/039/013 and informed him of the opportunity to present evidence, cross-examine, and participate in the Board's withdrawal proceedings.

COUNT 1

(Withdrawal of NOI for Failure to Satisfactorily Reclaim the Land)

22. The Division hereby incorporates the allegations of paragraphs 1-21 hereof and further alleges as follows.
23. Utah Code Annotated § 40-8-16(2)(a) (2010) provides that a NOI may be withdrawn if an operator substantially fails to perform reclamation so that the approved reclamation plan can be accomplished.
24. The Respondent, as operator of the Quarry, is required by Utah Code Annotated § 40-8-12.5 (2010) and is contractually bound by the terms of ML 48313-MP, ML 48949-OBA, ML 50575-BS, ML 51303-MP (SCH), NOI M/039/013 and the Transitional Reclamation Agreement to satisfactorily reclaim the Quarry according to Division rules.

25. The Respondent has indicated his awareness of this reclamation obligation through multiple but unsatisfactory attempts to complete reclamation. Additionally, there have been numerous meetings between the Division, SITLA, and the Respondent to discuss his reclamation duties.
26. In addition to the original duration of 48313-MP/ML 48949-OBA, the Respondent was provided four distinct opportunities to complete reclamation: a special one-year reclamation lease ML 50575-BS; a second special reclamation lease ML 51303-MP (SCH); a 30 day extension of ML 51303; and an additional 45 day extension of ML51303.
27. As of March 17, 2010 the Division concluded the Respondent had failed to satisfactorily complete reclamation.
28. As of the date of the filing of this Notice of Agency Action, the Respondent's continued failures to complete reclamation are reasonable evidence that the approved reclamation plan will not be accomplished and that the NOI should be withdrawn.

COUNT II
(Declare Letter of Credit Forfeited and Order for Division to Reclaim and Recover Costs of Reclamation)

29. The Division hereby incorporates the allegations of paragraphs 1-28 hereof and further alleges as follows.
30. Utah Code Annotated § 40-8-14(6) (2010) provides that if an operator of a small mining operation fails or refuses to reclaim as required by the statute and regulations, the Board may order the surety filed with the Division forfeited and may request the Attorney General to take necessary legal action to recover costs

and expenses in a civil action brought by against the operator.

31. The Respondent, as the signatory of NOI M/039/13, is legally identified as the operator and registered agent of the Quarry under the NOI.
32. The Respondent obtained and posted as surety for the reclamation of the lands mined under NOI M/039/013 LOC Number 15413040 from Far West Bank in favor of the Division for the amount of \$36,000.
33. Division inspections show the Respondent has substantially failed to reclaim the land, placing him in default of Utah law, Division rules, NOI M/039/013, various SITLA mineral leases, and the Transitional Reclamation Contract. The Respondent has received repeated notices of the default and failed to cure.
34. To properly complete reclamation of the Quarry, the Division must call on the LOC and may need to seek additional money from the Respondent through a civil action if reclamation costs exceed \$36,000.
35. Accordingly, the surety should be forfeited per provisions of the LOC and the Division should be directed to complete reclamation and seek to recover any additional costs.

COUNT III

(Authority for Division to Pursue All Things Necessary to Complete Reclamation)

36. The Division hereby incorporates the allegations of paragraphs 1-35 hereof and further alleges as follows.
37. Utah Code Annotated § 40-8-6(4) (2010) authorizes the Board “to do all things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.”
38. To successfully complete reclamation of the Quarry, the Division may need to

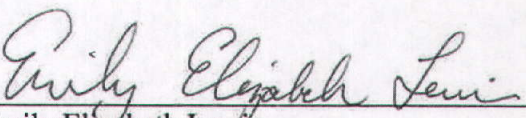
pursue avenues like cooperative agreements with SITLA, or other agencies, and take other actions as authorized by statute.

PRAYER FOR RELIEF

WHEREFORE, the Division requests that the Board enter the following Order(s):

- A. An order withdrawing Notice of Intention No. M/039/013 due to the failure of the Respondent to satisfactorily perform reclamation of the land or claim responsibility for reclamation costs.
- B. An order declaring the Letter of Credit No. 15413040 forfeited, directing the Division to complete reclamation, and authorizing the Attorney General to pursue a civil suit to seek recovery of reclamation and associated costs.
- C. An Order authorizing the Division to seek all other actions as may be appropriate or necessary to reclaim the B&C Quarry and recover costs. Such further relief as the Board may deem just and equitable under the law and facts as may be adduced in the proceeding hearing.

Dated this 17th day of October, 2010.


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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the forgoing NOTICE OF AGENCY ACTION, to be personally served or mailed first class mail, postage prepaid, the 14 day of October, 2010, to:

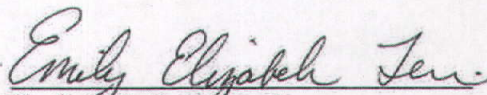
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